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DISCUSIÓN

A Kantian Theory of Employment, or How Domestic Right Structures Contemporary Work: A Reply to Williams

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ENG **Abstract:** This article shows how Kant's framework of domestic right can be understood as a model for modern employment law, a suggestion made by Garrath Williams in a commentary on *Kant's Theory of Labour*. I begin by exploring how Kant's historical context informed his account of labor relations and argue that he made three key innovations: the theorization of domestic right, the linkage of work and political standing, and the development of contract right to make sense of the material dependency and formal equality of "free" contract workers. This account of contract-based work, however, sketches a dangerous "fantasy" of free contract that we see echoed in contemporary defenses of the gig economy. I show that this argument is central to understanding Kant's evolving conception of the relationship between labor and citizenship, but I defend the claim that modern employment resembles domestic right more closely than contract right, by attending to both the formal structures of modern employment law and the lived experiences of professional employment in the digital age. Finally, I explore how drawing on the domestic model for understanding modern employment can help us to see the limits of both Kantian and contemporary accounts of the public good. I highlight the ways that public law is deployed to formalize asymmetrical relations of dependence, to check their capacity for exploitation and domination. In so doing, public law acts to limit the scope of the state's responsibility for both the formal and material conditions of equality, freedom, and flourishing, enforcing conditions in which citizens must rely on private employers for goods like health insurance, sick leave, and a minimum income.
Keywords: employment, status/domestic right, authority, inequality, intersectionality

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In *Kant's Theory of Labour*, I argued that Kant's theorization of domestic labor was one of several important innovations in Kant's thinking on labor, work, and political economy. This is in part because, as a feminist philosopher concerned with the systematic erasure of so much caregiving and reproductive labor in the history of philosophy, Kant's explicit theorization of this domain of work, and his insistence that it be recognized as a core feature of the state, seemed like an important and under-theorized dimension of his contribution to the history of philosophy. But as Garrath Williams' argument can help us see, Kant's theorization of the structure of domestic and service labor is not of interest only to those interested in the working conditions of women, or non-whites, or the poor, but is a critical tool for understanding the formal structures of modern employment law[1]. Bringing an intersectional lens to Kant's theorization of labor is important not only because it can help us to flesh out how race, gender, and class mutually constitute one another and reveal systematic inequalities in Kant's political system, but because it allows us to recognize those systematic inequalities as modeling forms of "rightful inequality" that still haunt us today, not just in what is sometimes called "identity politics" but in the organization of work and citizenship. As I will argue, Kant's theorization of domestic and service labor as "the right to a person akin to the right to a thing" can help us not only, as Williams suggests, to understand modern employment law, but also to recognize the limits of the Kantian conception of the public good.

1 It is an honor to think with Williams on these questions, and I am grateful for the many exchanges we have had about his work and mine, as we develop resources for understanding Kant as an important theorist of labor, domination, and questions of political economy (see Williams forthcoming).

In bringing an intersectional lens to Kant scholarship, my goal is to read Kant as a systematic philosopher, whose system incorporates theoretical, practical, anthropological, and scientific questions. Kant's thinking on work is systematic, from his early reflections on domestic labor, to his refinement of creative freedom in the 3rd Critique[2], to his development of the distinction between active and passive citizenship in the *Doctrine of Right*. To my mind, part of treating Kant as a systematic philosopher is taking his theorizations of race, ethnicity, gender as *part of* his system to read Kant as consistent with himself — even when that consistency takes the form of embedding inequality in a theory of justice. I am interested in Kant's systematic theorization of inequality because of what it might tell us both about the weaknesses of his own system, as well as the weaknesses we might identify in our own systems, which inherit many of the moves Kant makes.

To do this, I think it is valuable to *locate* Kant as a particular, embodied thinker writing in a particular place and time[3]. Kant theorized labor over several decades as working conditions in Prussia and Central Europe were changing drastically, and Kant's thinking reflected and responded to these shifts. In what follows, I begin by exploring how these historical conditions informed Kant's innovative thinking on labor. I then take up Williams' central suggestion that we treat domestic labor, rather than contract labor, as a model for modern employment. Finally, I show that such an approach is important not just for theorizing modern employment, but for identifying the limits of Kant's conception of public right.

2. The Roots of Kant's Thinking on Contract Labor

Kant began writing and teaching on labor in the 1770s and early 1780s, as legal reforms and economic shifts in Prussia and across Central Europe dismantled the landlord system. These reforms freed serfs from the enclosed dependency that had organized their labor for centuries; as legal reforms altered land use practices, former serfs found themselves employed as contract laborers in new kinds of agricultural arrangements, and many flooded into cities like Königsberg to find new kinds of contract work[4]. The political, social, and economic implications of this transformation were particularly apparent to Kant, who was teaching his political philosophy course using Gottfried Achenwall's *Natural Law* as a textbook. Achenwall's picture of "work" was still a feudal one, which located labor in the "household" as a broad constellation of servants, serfs, slaves, and wives (2021)[5]. But Kant was also reading Adam Smith, who was telling a different story about the value of serf labor and theorizing the growing division of labor in an increasingly specialized and global economy. Smith's influence likely armed Kant with resources to recognize and theorize the labor transformations which were underway.

Kant's thinking on labor in the *Doctrine of Right* retains the structural features of Achenwall's text, including the emphasis on the ways that the labor performed within the household shaped a significant proportion of economically productive work, and was thus critical to understanding both political economy and the political standing of heads of households[6]. But Kant also innovated new ways to think about the emerging category of free but dependent laborers who were transforming the economy of Königsberg and populating Smith's picture of "free enterprise." Central to Smith's argument was a worry that increasingly specialized, contract-based work made laborers "stupid and ignorant" and unable to participate in public life[7]; the French Revolution, which spurred much of Kant's political thinking, insisted on a reckoning about the rights and capacities of laborers and peasants to participate in public discourse and the state.

This is to say that by situating his theory in his historical moment, I think we can recognize at least three important innovations in Kant's thinking on labor. The first — which is my focus in *Kant's Theory of Labour* — is his development of the "third form" of private right, framed as "the right to a person akin to the right to a thing", which defines relationships in the household (6:276)[8]. This was the innovation recognized by his earliest critics[9], and it remains an important innovation for 21st century theorists, who have inherited theories of labor that too often bracket off the household and the forms of labor within it, rendering these forms of labor "invisible" from a market perspective. But the association of household work as "unproductive" and largely unpaid — and thus outside the "market" — was not a given: at the time Achenwall's textbook was written, it was still the case that most paid, productive labor was located within the (feudal) household. Kant was writing as many of these forms of labor made their way into the market, as the household shrank, and the feudal peasant economy splintered. The household is not yet, for Kant, a site "outside" the market economy (and thus a liminal space in the state)[10]; it is, rather, a core feature of both the economy and the state, deserving of careful theorization. Kant's theorization of domestic and reproductive labor *as labor* and as a distinct structure of

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2 For discussion of these arguments, see Pascoe 2024b (forthcoming) and Re 2023.

3 For discussion of the project of "locating" Kant, see Huseyinzadegan and Pascoe 2022. I draw on both Walter Mignolo's conception of "cutting Kant down to size" (2011) and Adrienne Rich's account of the "politics of location" (1984).

4 In response to a 34% population increase in Europe, which led to serf revolts and the famine of 1770-71, Frederick the Great instituted legal reforms designed to encourage agricultural expansion by allowing noble landowners to borrow, trade, or lease estate lands. This led both to the rapid divisions of the commons, as more land was put to agricultural use, as well as to a radical destabilization of the serf economy, since serfs would be leased or lent along with the land on which they lived (Berdahl 1988, pp. 78-82).

5 See especially Part II, Book II, Section II, Title III on the "Master Society" (Achenwall 2021, 128-133).

6 For discussion of Achenwall's influence on Kant's emerging political philosophy, see the essays in Rauscher (forthcoming); see Pascoe (forthcoming) for analysis of how Kant's theorization of the household adapts Achenwall's arguments.

7 Smith 2005,110

8 In this article, I refer to Kant's works by <volume number>:<page number> in the standard Academy edition. Citations from volume 6 is the *Metaphysics of Morals* (1797); most refer to the first half of that text, *The Doctrine of Right*. Translations rely on the Cambridge edition.

9 See Bouterwek's review (*RDL 20: 448)*; for discussion, see Pascoe 2022, 14-16.

10 See Pascoe 2019 for discussion of the debate between Kant's contemporaries about the status of the household within the state.

rights remains innovative, not just for feminist theorizing but, as Williams suggests, for thinking about the nature of work more broadly. We'll return to this point below.

The second important innovation is Kant's intervention in the meritocratic thinking of Enlightenment liberalism: his claim that it is independence, or self-sufficiency, that marks one as a full and equal citizen, rather than property. In light of the legal reforms limiting the judicial power of landlords, this argument offers an innovative corrective appropriate to emerging economic and social conditions in which the conditions for independence were not *only* tied to property, but to the emerging bourgeois class of shopkeepers, civil servants, and entrepreneurs[11]. Kant's model aligns with Smith's picture of an egalitarian free market populated by the self-employed, who enter into contracts as persons with free and equal standing. But Kant's argument recasts the self-employed explicitly as *citizens*, whose standing as self-employed (or state-employed, which amounted to the same thing), independent laborers justified their full and active participation in the state.

His third innovation, which concerned contract labor, also reflects his awareness of social and economic shifts: Kant proposes that, while the paradigmatic cases of contract are buying and selling, we can adapt the contract framework to make sense of the employment conditions in which this new class of "free" laborers must operate. Unlike serfs, who work to live on their landlord's lands and are treated as subjects of their landlord's judicial authority, "free" laborers rent their labor for defined periods to earn the money to feed, house, and protect themselves. Kant extends the category of contract right to make sense of these novel labor conditions, and to highlight the distinction between the forms of "enclosed" dependency in which serfs and servants find themselves, and the relative autonomy and authority that "free" laborers have to determine their lives and work.

This is to say that I think Kant has both good historical and systematic reasons for wanting to think of this emerging form of labor as best defined through contract. Smith's thinking on free enterprise is in the background here, as is the Lockean claim (which Kant rejected) that one's labor is a kind of "property in the person" which one can "rent out." Kant reconfigured these ideas to make sense of "free labor" as a variation on contract as "a right against a person." What makes this kind of contractual labor distinct from the forms of status right that predominate in the household and the tenancy system is that they do not involve a right "to" the person — to his ends, person, or status — but a right *against* a person, in the form of a right to his "promise" (6:274). Such contracts, Kant would argue in his *Dogmatic Division of All Rights That Can Be Acquired By Contract*, can be either a promise to "grant another the use of my powers for a specific price" (6:285) or to "carry on another's affairs in his place" (6:286). Such contracts remain "free" in that the laborer retains rights over his own person, ends, and time[12], and agrees only to limited, specified labors for a limited, specified time[13]. Kant's conception of contract labor can, I think, be understood as an explicit attempt to articulate what made the political standing of such "free" contract laborers different from that of serfs, by way of reflecting on the broader social and political implications of contemporary legal and economic reform[14].

In *Kant's Theory of Labour,* I take Kant at his word when he extends this framework to delineate contract labor, and I follow his account of contract as delineating a relation of "formal equality" between employers and employees. This is because I think this conceptual category of contract labor is an important innovation on Kant's part, central to understanding his evolving conception of the relationship between labor and citizenship. Kant's account of contract work draws on the Smithian ideal that contracts organize relationships of equality and free exchange, but it does so by delineating contract work from forms of labor organized in the household: a contract worker is distinct from a servant, serf, or wife, in that he does not agree to indeterminate labor for an unspecified time (6:360)[15]. The contractual limits of such labor, on Kant's account, leaves the worker free to spend some of his time acting as a citizen, setting ends of his own and speaking as a "public" person, rather than from some private office (8:38; Pascoe 2022, 12-13). Part of Kant's purpose, after all, is to defend the premise that contract laborers are "passive citizens": they remain in positions of dependency, yes, but should be recognized *as citizens*, as free and equal (if not independent) persons subject to *public* law, rather than to the judicial or manorial discretion of a landlord or the authority of a head of household. Accordingly, Kant leans on the description of formal equality already embedded in his account of contract (of which buying and selling remain the paradigmatic case) to emphasize the role of the "united

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11 For discussion of the tension between self-employment and wealth in Kant's citizenship argument, see my exchange with Martin Sticker: Sticker (2023); Pascoe (2023).

12 As Kant put it in the *Reflections* on Achenwall's textbook as he was working out this distinction, he does not "dispose over his own person for the use of another" (19:458 Refl 7572).

13 In the Appendix to the *Doctrine of Right,* Kant argues, "what distinguishes such a [domestic] contract from letting and hiring is that the servant agrees to do *whatever is permissible* for the welfare of the household, instead of being commissioned for a specifically determined job" (6:360). This is consistent with his remark in the *Reflections* on Achenwall's textbook that "To let for hire *perpetuas indeterminatas operas alteri* {the indeterminate works of another perpetually} is called alienating the *usum virium suarum* {use of one's power}, hence to alienate his freedom and his person itself. For without use of his power in accordance with his own will freedom is nothing." (19:558 Refl. 7931).

14 In the early 1780s, in Feyerabend's notes on Kant's political lectures, the distinction is not yet worked out: Kant's focus is on the mode of payment for forms of employment that occur when I empower another to take my place, and his description blurs status right and contracts empowering an agent (27:1362-3).

15 My reference to contract workers as men is intentional: part of the construction of this category, on Kant's account, is that it is a distinctly male form of labor, to be distinguished from the ways that women remain dependent within the household. This is not to say that women could not become contract workers (see Pascoe 2015 for discussion of this), but that the invention of a category of dependent labor with access to public reason is an explicitly gendered project — both in Kant's hands, and in Western history more broadly.

will" in contractual relations, and to theorize "free" employment contracts as aligned with the freedom and equality of citizens.

Contracts, here, are designed to offer an ideal account of the ways that buyers and sellers are formally equal in relation to the terms of any contract between them, such that they have equal agency over the terms of the contract, and are formally equal in relation to those terms (e.g., regardless of material differences, the contract treats them *as if* they were equal)[16]. When Kant extends this framework to delineate contract labor, he positions labor — whether "work on hire" or one's powers as an agent (6:285f), — as something which can be bought and sold like other things can be bought and sold, and imagines an ideal, formally equal structure that ensures that the terms of exchange do not infringe on freedom or equality, nor bind agents asymmetrically to one another.

As Williams points out, Kant's contract workers are in some ways analogous to today's "gig workers" in that their labor is presented as "purely" contractual in form (even as contemporary courts are beginning to challenge this designation), and thus, as a kind of liberation from the formalities of employment law. In Kant's day, the formalities of the feudal system prevented serfs from acting as citizens in a range of ways; contract work was a liberatory category, in Kant's hands, in that it was constructed as compatible with (passive) citizenship. As the story goes, then and now, contract workers owe no one obedience or loyalty; their ends are their own, as is their time outside of work. Their material dependence on an employer who pays a wage in accordance with a contract is not a *formal* dependence, since both the employer and the employee are equal in regard to the terms of the contract. Kant's conception of "passive citizenship" was meant to capture this distinction, to grant both the formal equality of the contract and the forms of material dependence that can follow from it.

All this is by way of clarifying what I think Kant takes himself to be doing. In a framing remarkably similar to libertarian defenses of the modern gig economy, Kant's conception of contract delineates working structures in which we remain our own persons outside the workplace, and our commitments to the workplace are clearly defined and stipulated; they function to delineate between one's dependency as a worker and one's freedom and equality as a citizen. Combined with Kant's insistence that all contract workers must be able to "work their way up" (6:315) to independent forms of work and thus, to active citizenship, his theorization of contract labor is an important piece of the meritocratic republican vision he takes himself to be developing. In particular, I think we can understand its emergence as a key piece of his thinking on labor in the 1790s as a frame designed in response to the challenges of equality and citizenship posed by the French Revolution, as well as to the forms of liberation — and precarity — that followed the dismantling of the landlord system. Of course, as is so often the case for Kant, it also happened to align with his own conceptualization of inequality: by highlighting the emerging freedom and equality of contract laborers through a distinction with domestic, status, and serf labor, Kant also reinforces the dependency and inequality of those who continue to work in domestic, serf, and service labor. That these economic shifts increasingly associated such labor with women, the agricultural class, and people of color simply fortifies the "rightfulness" of such a picture from Kant's perspective, given the broader commitments of his philosophical system[17].

3. Domestic Labor as a Model for Modern Employment Law

As should be obvious by now, I don't think Kant got this right, nor that his map of emerging labor relations accurately tracks the economic innovations that would follow. It is in this sense that I find Williams' suggestions so productive. By seeking to distinguish new "free" patterns of labor from older, more dependent ones, Kant misses many of the ways that the logics of dependency and status shape employment relations outside the household and the feudal or semi-feudal tenancy system — and indeed, the ways that the formal conditions of employment within the household and tenancy system would come to shape practices of employment outside it.

Thus, I think that Williams is absolutely right: many features of modern employment — particularly for professional and salaried labor — more closely resemble the structure and logics of household than the "contract" model. This is one of the reasons I think Kant's arguments on household labor deserve greater attention. In a 2017 paper on Kant and Marx, I proposed that the labor conditions of the household — rather than of Kantian contract or the Marxist idea of the "working day" — were most instructive for understanding the structure of obligation and the scope of work of most modern professionals, for whom "the working day" is just "any time I can be online."[18] If a core feature of domestic labor is that servants and wives agree to "take the ends of the household as their own" and do "whatever is permissible" to fulfill those ends, then this is indeed a more apt description of professional expectations in the 21st century than almost anything Kant (or

16 Public law ensures that parties to a contract are equal in relation to the terms of the contract (e.g., both can seek to have those terms enforced in public court) but is less than clear on Kant's account how public law operates in the background to ensure that potential contractors are formally equal in their ability to negotiate the terms of the contract, given (often radically) unequal material conditions. In his discussion of contract, Kant suggests that "abstraction from those material conditions" will ensure that one bargains through a single "united will" (6:273), and that the terms will be such that each party is "enriched by" his possession of the other's promise (6:274). However, he gives little guidance as to how public law ensures that the terms arrived at (e.g., the negotiation of those terms) will reflect such abstract, formal equality given both material inequality and the coercive conditions of the market. My thanks to Williams for particularly productive discussion on this point.

17 On the association of non-white people with these forms of labor within Prussia, see Rebecca von Mallinckrodt (2021) work on the high-profile trials in the 1780s and 90s that tested the status of non-white slaves in Prussia, and shaped public conception of non-white workers. On race and gender in Kant's philosophical system see Lu Adler 2023, Sandford 2023, and Huseyinzadegan and Pascoe 2023.

18 See Pascoe 2017, 612-613.

Marx) said about contract (or wage) labor. And the kinds of authority that Kant granted to heads of household — which were clear holdovers from the landlord system, which granted landlords private judicial control over serfs, including the right to "retrieve" them if they ran away — are important precursors to the ways that modern employers often operate, as Elizabeth Anderson has put it, as "private government."[19]

This isn't to say that Kant himself made this connection. Some Kantians have proposed that we read the category of domestic labor more broadly as "status relations" that refer to any kind of employment defined by having a status or "mandate" in relation to another[20]. Kant's own references to these kinds of relationships do consistently locate them within the "restraining walls" of the household (6:248), but I appreciate Williams' suggestion that Kant *should have* treated domestic relations as a model for understanding other kinds of relationships, such as employment relations. Following this suggestion, we contemporary Kantians might attend to Kant's innovative theorization of the "right to a person akin to the right to a thing" not only because it provides us with resources for attending to patterns of domestic labor that are often rendered invisible in dominant political and economic theory, but also because this framework might be a critical tool for recognizing the formal inequalities built into employment relations more broadly. Historically, this makes sense: in a feudal society, most employment simply *was* household employment, rather than wage labor. When our genealogies for thinking about labor track Marxian frameworks, we tend to miss this, and to take wage-labor as the paradigmatic form of labor.

Instead, Kant's framework provides us with tools for recognizing the roots of modern employment relations in the formal conditions of household and feudal labor, rather than on the factory floor. Rather than providing resources for theorizing modern organizational employment, Kant's account of contract labor sets up a dangerous fantasy of ideal contracts, which serve to obscure how most employment contracts in fact formalize asymmetrical relationships of dependency, and how it is public employment law, rather than private, specific employment contracts, that enforce the asymmetrical terms of employment[21].

In this sense, modern employment contracts share key features with domestic employment relationships, rather than with Kant's account of contract. In Kant's description of the household, one enters into an initial contract (of marriage or employment) through which one agrees to submit to the authority of the head of the household and to take his ends — "the ends of the household" — as one's own. These contracts of "entry" reflect the formal equality of contract and the material inequality of dependency — hence Kant's insistence that husbands and wives be in a relation of "equality of possession" in order to enter the contract even if, after marriage, the husband is also her "master" (6:278-9). Kant's prohibition on morganatic marriage reflects that these formal conditions of equality are not met: the contract "takes advantage of the inequality of estate of the two parties to give one of them domination over the other" (6:279). Regardless of such formal claims to equality at the time of entry, such contracts *produce* an asymmetrical relationship in which wives and servants are so thoroughly under the authority of the head of the household that he can "retrieve them" when they run away[22], and in which wives and servants must adopt the ends of the household "as their own," remaking their own life projects accordingly. The domestic employment contract explicitly produces "a society of unequals" (6:283). There is no "formal equality" in relation to the terms of employment, and the inequalities within the household are backed by public law.

Similarly, as Williams points out, modern employment law functions to formalize an asymmetrical relation between employers and employees, and to delineate the terms of that relationship in ways that exceed any individual employment contract. Those terms — duties of loyalty and obedience, on the one hand, and duties of care and payment on the other — bear remarkable similarity to Kant's description servant's duties to do "whatever is permissible for the good of the household" (6:361) and of the head of household's duties to feed and protect wives and servants (6:314). In both cases, the duties of employees exceed any specific, contractual delineation of duties: they involve a broader agreement to act on behalf of one's employer, to do whatever is necessary to fulfill those duties. This "whatever is permissible" is reflected in the structure of compensation: rather than wages for specific, delineated contractual work, servants are "fed and protected" while modern employees receive a salary and benefits reflecting their broad commitments to the projects of the company.

As Williams says, the stakes here are high. One danger of theorizing labor in ways that treats wage labor as the paradigmatic form of employment is that we tend to believe the fantasy Kant sketches: the worker whose professional duties are clearly delineated from personal ones, who has the old ideal of "8 hours to work, 8 hours to sleep, and 8 hours for what one will" and who has, therefore, the capacity to fully engage in leisure and the activities of the citizen. Understanding how professional employment bears the DNA of domestic

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19 Anderson 2017. See, too, Williams (forthcoming) for illuminating discussion of the ways that modern corporations bear structural similarities to the Kantian household.

20 See Arthur Ripstein's description of students and teachers being in such a relation (2009, 73), and Byrd and Hruschka's broad account of status relations as any relation in which one "enters into community" with "duties of loyalty and duties of care (2010, 255).

21 This fantasy is operative not just in modern employment law, but in contract law more generally, where the rise of online "pseudo-contracts" like user agreements with boilerplate language undercut any claim to "formal equality" in relation to the terms of contract, and agency over the terms of contract. See Kar and Robin 2019.

22 This clause reflects the ways that the legal frameworks of tenancy and the feudal household linger in Kant's account of the household: where employment contracts are designed to ensure that "free" laborers are able to speak and act "as citizens", under the authority of public law rather than the private will of their employers, domestic contracts retain the structure of private juridical control that marked the landlord system, in which serfs and servants were subject to the authority of a landlord's juridical determinations prior to public law.

service — picture Carson, the butler in *Downton Abbey* who is always starched and never really off-duty — can help us to better identify the ways that, in our digital world, our professional projects seem to creep into all the parts of our lives. It can help us attend to the ways that we are "on duty" anytime we are reachable — which is always — and how we reshape our identities, online and off, in ways that reflect our "brand" as a particular sort of professional. Carson, after all, understood that his comportment on the job and off was a direct reflection of the dignity of Downton Abbey[23]. Contemporary norms for how professional employees comport themselves online are no different.

We badly need better philosophical language for theorizing these kinds of incursions[24]. Kant's distinction between public and private uses of reason suggests that there are clear distinctions between those moments when we speak as a "public person" and those times when we speak as the representative of some private office (8:38), but the ways in which employees are increasingly expected to develop public personaes designed to further their employer's ends muddies these waters. In *Kant's Theory of Labour*, I argued that a key distinction between contract labor and domestic labor was the capacity to participate in public reason: both kinds of work are framed as "dependent" and thus both kinds of workers are merely "passive" citizens, but Kant's emphasis on the limited nature of contract was designed specifically to ensure that contract workers retained the freedom to speak as "public" persons. Domestic servants have no such right: because they must adapt their own ends to do "whatever is permissible" for the good of the household, they always speak as the representative of some private entity, e.g., the household. (Of course, heads of household are not encumbered by their membership in the household in these ways — in fact, Kant includes being a head of household as one of the criteria for citizenship in one of his early drafts (VTP Stark 245).) Kant's theorization of this kind of "enclosed" dependency is tremendously useful for naming the ways that modern organizational employment often involves claims not just to one's time, one's labor, or one's reason, but to one's identity as a "public" person — and the ways that employment law permits and enforces these claims.

4. Domestic Right and the Scope of the Public Good

One worry I have had about moves to treat the "right to a person akin to the right to a thing" as a framework for conceptualizing professional employment is that such a move can tend to collapse together very different forms of work in ways that can make the patterns of exploitation and domination that structure domestic and service labor — and the raced, gendered, colonial, and classed hierarchies on which they depend — more difficult to parse. Linking domestic and service labor with modern professional employment can seem to rob us of a tool for recognizing how background conditions of inequality — like race, gender, coloniality, and class — often produce patterns of coerced cooperation in domestic and service labor. After all, as Williams notes, those with greater social power generally have better bargaining positions, and many (although far from all) modern professional employees have salaries and positions that afford many benefits, comforts, and forms of control that are still systematically denied to domestic and service workers. We continue to have an economy that values (and pays) professional work as "work" while domestic and service work is still often underpaid, unpaid, or organized through dominative "tip" economies. The legal protections available to workers in these contexts remains drastically different, as employment law is often reluctant to formalizing and enforcing both domestic and service labor, leaving these workers subject to domination, harassment, wage-theft, and other kinds of precarity[25]. This lack of formal legal protection has significant impact on the political standing of such workers, ensuring that this work is often done by migrants, immigrants, and others without formal rights to work, and generating on-the-ground conditions that mirror the kinds of "enclosed" dependency baked into Kant's account of domestic labor.

But I think it is important to recognize the continuities between domestic right and modern employment for at least two reasons. First, treating domestic and service labor as "special cases" in our theorization of work also functions to further marginalize those forms of work — and to legitimize, by contrast, other kinds of labor relations. As I note in *Kant's Theory of Labour*, Kant does a version of this in his discussion of sex work. On Kant's account, a sex work contract is illegitimate because it involves promising something we cannot promise (use of ourselves for someone else's end) in background conditions in which such a promise cannot be taken to reflect abstract equality (basically, patriarchy, white supremacy, and capitalism). But, by suggesting that the conditions of indeterminacy, domination, and exploitation that organize sex work and slavery are *special problems*, and not relevant features of other kinds of working environments, Kant bolsters the legitimacy of other kinds of labor contracts. Bracketing off sex work and slavery allows Kant to bracket off conditions of indeterminacy, domination and exploitation, and to claim that "proper" employment contracts

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23 In Carson, too, we have a reminder that in the 19th and early 20th centuries, domestic labor itself was "professionalized" in certain privileged contexts (like Downton Abbey), while in others (like the postbellum United States) the labor of the household was outsourced to an underpaid, tip-driven service economy. This bears out Williams' point that "a few people with special reputations or skills may be able to bargain hard and get a much better deal" while weaker parties — or those more affected by coercive and often intersectionally constructed background conditions — must accept worse deals. As the household shrank and domestic labor increasingly moved outside the home, the structures of domestic labor made their way into the broader economy in both professionalized contexts like Carson's, and in the gendered, raced, tip-based service economy.

24 See Anderson 2017 for a move to do just this.

25 For discussion of how U.S. law since the New Deal has formalized this inequality, see Pascoe 2022, 44. In service labor, I include those who work in, for example, restaurants, bars, car services, and the hospitality industry, particularly when their compensation is primarily black market or tip-based, ensuring that formal legal protections are limited or non-existent. Tip-based working conditions reflect a duty to do "whatever is permissible" for the welfare of the customer, rather than a contract in which duties, and pay, are specified.

can function as ideal documents, abstracting away from on-the-ground-conditions to treat employers and employees *as if* they were formally equal. This fantasy of "free contract" and formal equality continues to play a critical role in bolstering liberal and neo-liberal stories about free participation in labor markets and constructing our image of the free and equal citizen-worker.

There is, I think, a similar danger to bracketing off domestic and service labor as "special cases" shaped by background conditions of oppression and exploitation, which serve to render other kinds of employment contracts as legitimate and non-oppressive by contrast. Instead, by recognizing how domestic and service labor operate as models for modern organisational labor we can recognize how the asymmetrical structure of employment law operates in background conditions of inequality and domination to enforce a coerced cooperation in employment contracts that are increasingly indeterminate, granting employers rights *to* the labor, judgement, and self-presentation of the employee, while insisting that employees transform their ends and personal projects in order to do "whatever is permissible" for the good of the corporation.

Second, treating domestic right as a model for modern employment relations draws our attention to the *formal* structure of household employment, making apparent the ways that this formal structure is practiced in, but not limited to, the household. As Williams notes, Kant could not have foreseen how the corporation — then in its infancy — would reorganize both labor practices and the structure of public law. But we have good historical reasons for tracking modern employment law to the forms of domestic and service labor Kant theorized. Sylvia Federici shows how oppressive structures and practices are often tested — and perfected — on women and the household before being deployed in capitalist and colonialist contexts (2004). The structures of the feudal household were adapted on plantations, which became the models for the management and labor practices of the modern corporation (Rosenthal 2019). As I show in *Kant's Theory of Labour,* we can trace how legal terms traveled between these contexts, providing us with a historical basis for thinking that the domestic employment relationships Kant was theorizing informed the development of slave law and then modern corporate law (2022, 24). Given this, the fact that Kant is one of the very few prominent Enlightenment philosophers to explicitly theorize these relationships, and to embed them in his normative vision of the state, is important.

Such an approach can also help us identify shortcomings in Kant's theory of justice. One distinction Kant makes between domestic and contract labor is that the head of household has duties to "feed and protect" wives and household employees, which ensure that certain rights and entitlements will be met by the household, rather than the state (6:315). The contract-based employer has no such duties. If we conceptualize modern professional employment as an adaptation of the domestic labor model, we can point to the many rights and entitlements covered in employment law, which effectively outsource critical forms of "feeding and protecting" to the employer, rather than positioning them as matters of *public* law. As Williams notes, employment law may include rights to minimum wages, sick pay, parental leave, holidays, and periods of notice. In the U.S., we can add health insurance to this list, which helps to illustrate the point: if health insurance, a minimum income, and parental leave are the duties of employers, then they are not duties of the state. Moreover, one gets such protections only by submitting to private authority, much as in the Kantian household.

A critical distinction in today's economy between professional employees and contract or "gig" workers is that the former are entitled to these forms of being "fed and protected" while the latter are not. This entitlement is protected by public law, just as Kant thought that the duty of the head of household to "protect and maintain" his servants was enforced by public law. They are entitlements that accrue to us not as citizens but as workers. As I argue in *Kant's Theory of Labour*, this has implications for the scope of the state's duties: if sick leave or health insurance are enforceable duties of private employers (or heads of household), then they are not public goods which the state has a duty to provide (2022, 43-45). Just as Kant argued that public, unconditional poverty relief might be extended only to those without access to a household that would "feed and protect" them — his primary examples are "widows and orphans" (6:326-7) — a minimal income, disability protections and, in the U.S., health insurance accrue only to those who do not have an employer legally bound to provide them[26].

This is to say that the one claim of Williams' that I would push back on is his hope that the non-contractual, status aspect of modern employment contracts requires formal safeguards to prevent domination and exploitation — and that public employment law aims to do this, just as Kant thought that domestic right served to ensure that the forms of inequality and dependence within the household were "rightful." Kant does position the legal framework of domestic right as a tool to diminish forms of asymmetrical domination that can occur without it: marriage is permissible because of the "legal equality" of partners, whereas morganatic marriage is impermissible because material inequality is not checked by this formal framework (6:279). Williams is right to name the ways that these legal protections are indeed better than the alternative, which are straight up relations of domination. Thus, a household in which an employer has formal, legal duties to "feed and protect" his staff is preferable to a tip-based service economy, in which workers are subject to the whims of customers, with no legal frameworks to protect them save for unenforceable recommendations about what kind of tip is generally expected. Likewise, employment conditions in which one's employer is subject to employment law, and the benefits and protections it guarantees, may be preferable to gig work.

But there is a flip side to this argument, too — one with significant implications. The problem is not only that Kant's account of domestic labor formalizes material inequality, ensuring that the oppressive structures that coerce cooperation in dependency relations are rendered both rightful and the basis for civil dependence.

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26 See Pascoe 2024a and Sticker 2024 for discussion of Kantian justifications of a basic income. See Pascoe 2024b for the implications of this argument as A.I. shifts employment practices.

It is also that by structuring dependence in this way, and formalizing it through public law, we displace the infrastructure of freedom, equality, and interdependence from public law and public authority to private relations of dependence. The purpose of public law, in this framework, is to *formalize* asymmetrical relations of dependence, to check their capacity for exploitation and domination. In so doing, public law acts to limit the scope of the state's responsibility for both the formal and material conditions of equality, freedom, and flourishing. It takes the enclosure of the household as a model for the enclosure of modern employment and corporate law, both of which serve to limit the scope of the common — or public — good.

5. Conclusion

As I noted at the beginning of this essay, Kant's theory of labor makes at least three significant innovations. In theorizing "free" contract labor, Kant took himself to be reflecting on emerging labor patterns and carving out a new kind of citizenship, while in his account of domestic labor, Kant likely understood himself to be offering an innovative theorization of a traditional form of work, which he had been struggling to conceptualize since at least the 1770s. Perhaps, then, it is not surprising that he got so much about domestic labor right, and so much about contract labor wrong.

Kant's account of contract labor remains important both for what it illustrates about his conception of citizenship and public reason, and for the resources it provides for thinking about contemporary "fantasies" of contract, and how they serve to obscure patterns of dependency. But Kant's theorization of domestic labor deserves to be understood as an important and prescient framework for understanding modern employment law, providing resources for recognizing the role of public law in formalizing and legitimizing private, asymmetrical relations of dependence. This does not diminish its importance for theorizing raced, gendered, and colonial forms of patterns of dependency. Instead it helps us to identify the ways that such practices of formalizing dependency are often tested in contexts shaped by gendered, raced, and colonial oppression, where they are more easily figured as "rightful" and thus as structures appropriate for formalizing asymmetries and dependencies that undergird our conception of the public good.

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